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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,288	09/08/2004	Ramon Diaz	28747.00004	5287
35161	7590	04/27/2006	EXAMINER	
DICKINSON WRIGHT PLLC 1901 L. STREET NW SUITE 800 WASHINGTON, DC 20036				SAADAT, CAMERON
		ART UNIT		PAPER NUMBER
		3715		

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/711,288	DIAZ ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Cameron Saadat	3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 February 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

In response to amendment filed 2/6/2006, claims 1-27 are pending in this application. Claim 28 is cancelled.

### *Claim Rejections - 35 USC § 102*

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

Claims 1-11 and 13-27 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. Claims 1-11 and 13-28 are substantially identical and supported by parent application 10/097,783. Accordingly, a question of inventorship has been raised since declaration filed 3/13/2002 of parent application 10/097,783 identifies inventors Hector Manuel and Ramon Diaz, and declaration of this instant CIP application identifies inventors Ramon Diaz and Olga Diaz.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kouba et al. (USPN 6,325,631; hereinafter Kouba) in view of Occupational Safety and Health Administration (OSHA 2254; Hereinafter OSHA).**

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

Regarding claim 1, Kouba discloses a method of providing an interactive computer based training system and testing of building safety information (Col. 1, lines 44-50) comprising the steps of: identifying a building where the deployment of building safety information is needed (Col. 2, lines 33-40); creating a customized safety presentation; providing from an interactive computer based training system, a presentation to building occupants (Col. 4, lines 3-20); authenticating users of the presentation (Col. 4, lines 41-67); testing the occupant; and retaining the authentication data and test results (Col. 5, lines 1-9). Kouba discloses a safety instruction and testing method as mandated by the Occupational Safety and Health Administration, but does not explicitly disclose that the safety information includes building specific emergency response plans. However, OSHA teaches training guidelines that include *emergency response plans* (See P. 20). Therefore, it would have been obvious to one of ordinary skill in the art to modify the building safety training method described in Kouba, by including emergency response plans in the safety information in order to comply with the training requirements set forth in *title 29, Code of Federal Regulations Part 1910*.

Regarding claims 2-3, Kouba discloses a method of providing safety instruction corresponding to a specific building (work-site). Kouba does not explicitly disclose that the buildings are (as per claim 2) identified as Hi-rise Class A, Class B or Class C buildings or (as per claim 3) identified as located in central business districts or suburban areas of major metropolitan cities. However, it would have been obvious to an artisan to modify the site-specific safety training materials described in Kouba for any type of work-site, in order to comply with OSHA regulations in all work places, and thereby provide effective

safety training to contractors whose occupation requires working at multiple work-sites for short periods of time (See Kouba, Col.1, lines 27-38).

Regarding claim 4, Kouba discloses a method wherein the building has telecommunications capabilities (See Fig. 1).

Regarding claim 5, Kouba discloses a method wherein the safety presentation is an audio-visual presentation (Col. 6, line 2).

Regarding claim 6, Kouba discloses a method wherein the audio-visual presentation is created as an interactive computerized multi-media presentation (Col. 6, lines 1-6).

Regarding claim 7, Kouba discloses a method where the audio-visual presentation may be created as non-interactive format (Col. 6, lines 1-6).

Regarding claim 8, Kouba discloses a method, wherein the presentation is deployed via the public Internet (Col. 3, lines 20-21).

Regarding claim 9, Kouba discloses a method wherein the presentation is deployed over a private area network (Col. 3, lines 34-39).

Regarding claim 10, Kouba discloses a method wherein the presentation is deployed on a customer's server (See Fig. 1).

Regarding claim 11, Kouba does not explicitly disclose that the presentation is deployed using removable media. However, OSHA teaches a method of delivering safety information, wherein a presentation is deployed using removable media (OSHA, P. 4, last paragraph). Thus, in view of OSHA, it would have been obvious to provide a presentation on a removable media, in order to vary learning materials as desired by an employer.

Regarding claim 12, Kouba does not explicitly disclose a flash drive. However, it is the examiner's position that the feature of storing a presentation on a flash drive is old and well known for providing portable learning materials so that a learner is not confined to one location for training.

Therefore, it would have been obvious to one of ordinary skill in the art to provide a flash drive for deploying the presentation, thereby providing portable learning materials so that a learner is not confined to one location for training.

Regarding claim 13, Kouba discloses a method wherein the testing occurs after completion of the presentation (See Fig. 3, ref. 220).

Regarding claim 14, Kouba discloses a method, wherein the testing occurs online (See Fig. 1).

Regarding claim 15, Kouba discloses a method, wherein the testing occurs via telephone (Col. 3, line 25).

Regarding claim 16, Kouba discloses an interactive computer based training and testing system for deploying safety information comprising: a database storing safety information (Col. 5, lines 61-63); at least one server configured to host the safety multi-media presentations; a network configured to transmit the safety multi-media presentations; at least one computer connected to the network (See Fig. 1; Col. 5, lines 1-9). Kouba discloses a safety instruction and testing method as mandated by the Occupational Safety and Health Administration, but does not explicitly disclose that the safety information includes building specific emergency response plans. However, OSHA teaches training guidelines that include *emergency response plans* (See P. 20). Therefore, it would have been obvious to one of ordinary skill in the art to modify the building safety training method described in Kouba, by including emergency response plans in the safety information in order to comply with the training requirements set forth in *title 29, Code of Federal Regulations Part 1910*.

Regarding claim 17, Kouba discloses a system wherein the server can run several multi-media presentations simultaneously (Col. 4, lines 41-49).

Regarding claim 18, Kouba discloses a system wherein the server is configured to authenticate each user, wherein said authentication is used to determine which multi-media presentation is accessed (Col. 4, lines 52-67).

Regarding claim 19, Kouba discloses a system wherein the server is configured to administer an emergency response preparedness test (Col. 5, lines 1-9).

Regarding claim 20, Kouba discloses a system, wherein the server is configured to store the results of each test (See Fig. 3, ref. 228).

Regarding claim 21, Kouba discloses a system, wherein the server is configured to tabulate test results (Fig. 3, ref. 222).

Regarding claim 22, Kouba discloses a system wherein the network is the public Internet (Col. 3, lines 20-21).

Regarding claim 23, Kouba discloses a system, wherein the network is a proprietary network (Col. 3, lines 34-39).

Regarding claim 24, Kouba discloses a system, wherein the computer is configured have access to the network (See Fig. 1)

Regarding claim 25, Kouba discloses a system, where the computer is located at a recipient's place of business (See Fig. 1, ref. 40, 42, 44).

Regarding claim 26, Kouba discloses a system, wherein the computer is located in a public testing center (Fig. 1, ref. 20, 22, 24).

Regarding claim 27, Kouba discloses a system, wherein the computer is located on the same private network as the server (See Fig. 1).

#### *Response to Arguments*

Applicant's arguments filed 2/6/2006 have been fully considered but they are not persuasive. Applicant emphasizes that the rejection of claims 1-11 and 13-27 set forth under 35 U.S.C. 102(f) should be withdrawn since amended claims 1 and 16 are now further limited to methods for an interactive computer based training and testing. It is argued that U.S. patent application 10/097,783 does not teach interactive computer based methods for training and education. The examiner respectfully disagrees.

Claims 1-27 of application 10/097,783 are clearly directed to a method for providing interactive computer based training and testing and are substantially identical to the claims of this application.

In addition, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The standard of patentability is what the prior art, taken as a whole, suggests to an artisan at the time of the invention. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379 (Fed. Cir. 1986). The question is not only what the references expressly teach, but what they would collectively suggest to one of ordinary skill in the art. *In re Simon*, 461 F.2d 1387, 1390, 174 USPQ 114, 116 (CCPA 1972). In this case, Kouba discloses a safety instruction and testing method as mandated by the Occupational Safety and Health Administration, but does not explicitly disclose that the content of the safety information includes building specific emergency response plans. However, OSHA teaches training guidelines that include *emergency response plans* (See P. 20). Therefore, it would have been obvious to one of ordinary skill in the art to modify the building safety training method described in Kouba, by including emergency response plans in the safety information in order to comply with the training requirements set forth in *title 29, Code of Federal Regulations Part 1910*.

It is further purported by applicant that the instant invention is directed to training at a place of employment. However, it is noted that this feature is not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further emphasizes that Kouba is directed to basic OSHA courses, while the instant invention is specifically drawn to site-specific emergency procedures per the particular building's state/city codes. It is noted that this feature of city/state codes is not recited in the rejected claims.

Applicant's arguments see remarks filed 2/6/2006, with respect to the rejection set forth under 35 U.S.C 101, have been fully considered and are persuasive. The rejection under 35 U.S.C 101 of claims 1-15 has been withdrawn.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is (571) 272-4443. The examiner can normally be reached on M-F 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*CS*  
Cameron Saadat  
April 26, 2006

*Robert P. Olszewski* 4/26/06

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